IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

JAMES WYNN PLAINTIFF

vs. Civil Action No. 1:95cv248-D-D

GENESCO, INC. DEFENDANT

MEMORANDUM OPINION

This cause stems from the defendant's termination of the plaintiff's employment from a managerial position and his replacement by the defendant with another person approximately three (3) years younger than the plaintiff. The plaintiff has filed suit against the defendant, stating that his termination constituted unlawful age discrimination in violation of the Age Discrimination in Employment Act. 29 U.S.C. § 623(a)(1) (making it "unlawful for an employer . . . to discharge any individual . . . because of such individual's age."). Presently before the court is the motion of the defendant Genesco, Inc. for the entry of summary judgment on its behalf. Finding the motion well taken, the undersigned shall grant it and dismiss the plaintiff's claims of age discrimination in this cause.

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986).

Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. DISCUSSION

As a claim arising under the ADEA, the plaintiff's allegation of discrimination is subject to the McDonnell Douglas shifting burden of production. McDonnell Douglas Corp. v Green, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973); Bodenheimer v. PPG Industries, Inc., 5 F.3d 955, 957 (5th Cir. 1993); Lindsey v. Prive Corp., 987 F.2d 324, 326 n.5 (5th Cir. 1993). The plaintiff has the initial burden to establish his prima facie case. If the plaintiff does establish a prima facie case, "the employer must articulate some legitimate, nondiscriminatory reason for the termination." Flanagan v. Aaron E. Henry Community Health Serv. Ctr., 876 F.2d 1231, 1233-34 (5th Cir. 1989); Whiting v. Jackson State University, 616 F.2d 116, 121 (5th Cir. 1980). The employer need not prove the absence of a discriminatory motive, but must show that the discriminatory motive did not play a significant part in the decision to discharge the plaintiff. Whiting, 616 F.2d at 121. Once the employer articulates its nondiscriminatory motive, the burden is again on the plaintiff to prove that the articulated legitimate reason was a mere pretext

for a discriminatory decision. Id. The burden of persuasion to establish the statutory violation ultimately rests with the plaintiff, "who must establish the statutory violation by a preponderance of the evidence." Id. Even if the plaintiff succeeds in revealing defendant's reasons for terminating him were false, he still bears the ultimate responsibility of proving the real reason was "intentional discrimination." Saint Mary's Honor Center v. Hicks, --- U.S. ---, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993) ("It is not enough to disbelieve the employer; the factfinder must believe the plaintiff's explanation of intentional discrimination."). Even assuming that the plaintiff is able to establish a prima facie case of discrimination in this cause, the undersigned believes that the plaintiff's claims fail as a matter of law.

The legitimate, nondiscriminatory reason set forth by the defendant for the plaintiff's termination from employment is "poor work performance." In support of this contention, the defendant has presented the court with substantial evidence, including "seventeen written memoranda of discussions pertaining to [the plaintiff's] poor performance, poor management skills, production problems, and inability to communicate effectively with the personnel in his department." Defendant's Memorandum Brief in Support of Motion for Summary Judgment, p.3. While the plaintiff hotly contests the defendant's reason for termination, the defendant has nevertheless presented this court with sufficient evidence to meet its burden under McDonnel-Douglas to come forward with a legitimate, nondiscriminatory reason for the termination. As stated earlier, the plaintiff must now demonstrate not only that the proffered reason was merely a pretext, but must also produce evidence that his age was a "determinative influence" in the defendant's decision to terminate his employment. "The plaintiff is left with the ultimate burden, which has never left him: that of proving that the defendant intentionally discriminated against

him." Moham v. Steego Corp., 3 F.3d 873, 875 (5th Cir. 1993); see also Dandridge v. Chromcraft, 914 F. Supp. 1396, 1403 (N.D. Miss. 1996) ("This 'change of story' evidence alone is certainly enough to create a question of fact as to the credibility of the defendant's proffered reason. However, as the defendants correctly point out and as the court has already discussed, the mere showing of pretext does not end this court's analysis."); Deaver v. Texas Commerce Bank, 886 F. Supp. 578, 583 (E.D. Tex. 1995). The Fifth Circuit has noted that "the factfinder's disbelief of the reasons put forward by the defendant . . . may, together with the elements of the prima facie case, suffice to show intentional discrimination." Rhodes v. Guiberson Oil Tools, 75 F.3d 989, 993 (5th Cir. 1996) (quoting Hicks, 509 U.S. ---, 113 S.Ct. at 2749).

However, when an ADEA plaintiff reaches beyond McDonnel-Douglas to the ultimate question of discrimination vel non, this court must employ the same "sufficiency of the evidence" analysis that is applicable to all civil cases:

> In an ADEA case, as in any lawsuit, a court must examine both circumstantial and direct evidence in deciding the sufficiency of the evidence . . . that the employer used age as a determinative factor in making the employment decision.

Rhodes, 75 F.3d 993-94. Even when this court considers all of the evidence currently before it in the light most favorable to Mr. Wynn, this court can find no genuine issue of material fact as to whether the plaintiff's *age* had any bearing on the defendant's decision to terminate his employment. The plaintiff has presented evidence to dispute the defendant's assertion that the plaintiff's work performance was "poor," and that perhaps the defendant was motivated by some other reason to fire him. This is insufficient to overcome a well-made motion for summary judgment, for the plaintiff must have at least some evidence that *age* was the reason. The plaintiff opines in his response to the defendant's motion that "[t]his case provides abundant

evidence of pretext." Plaintiff's Brief in Response, p.11. Regardless of this characterization, the plaintiff has offered no evidence of age discrimination. A "discharge may well be unfair or even unlawful yet not be evidence of age bias under the ADEA." Rhodes, 75 F.3d at 994 (quoting Moore v. Eli Lilly & Co., 990 F.2d 812, 819 (5th Cir. 1993)). There is no genuine issues of material fact to the matter of age discrimination in this case, and the defendant is entitled to the entry of a judgment as a matter of law.

III. CONCLUSION

Upon consideration of the defendant's motion, the undersigned finds that the plaintiff has failed to come forward with sufficient evidence of age discrimination when faced with a properly supported motion for summary judgment. There is no genuine issue of material fact as to this matter and the defendant is entitled to the entry of a judgment as a matter of law.

A separate order in accordance with this opinion shall issue this day.

This the _____ day of April 2001.

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United States District Judge

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GENESCO, INC. DEFENDANT

ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the defendant's motion for the entry of summary judgment against the plaintiff's claims in the case at bar is hereby GRANTED;

2) this cause is hereby DISMISSED.

All memoranda, depositions, affidavits and other matters considered by this court in granting the defendant's motion for summary judgment are hereby incorporated and made a part of the record in this cause.

SO ORDERED, this the _____ day of April 2001.

_____
United States District Judge